

5390--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 25, 2013

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Introduced by M. of A. KOLB, TEDISCO -- Multi-Sponsored by -- M. of A. BARCLAY -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommended to said committee

AN ACT to amend the criminal procedure law, in relation to capital punishment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 10 of section 400.27 of the criminal procedure  
2 law, as added by chapter 1 of the laws of 1995, is amended to read as  
3 follows:  
4     10. (A) At the conclusion of all the evidence, the people and the  
5 defendant may present argument in summation for or against the sentence  
6 sought by the people. The people may deliver the first summation and the  
7 defendant may then deliver the last summation. Thereafter, the court  
8 shall deliver a charge to the jury on any matters appropriate in the  
9 circumstances. In its charge, the court must instruct the jury that with  
10 respect to each count of murder in the first degree the jury should  
11 consider whether [or not] a sentence of death should be imposed [and] OR  
12 whether or not a sentence of life imprisonment without parole should be  
13 imposed[, and that the jury must be unanimous with respect to either  
14 sentence. The court must also instruct the jury that in the event the  
15 jury fails to reach unanimous agreement with respect to the sentence,  
16 the court will sentence the defendant to a term of imprisonment with a  
17 minimum term of between twenty and twenty-five years and a maximum term  
18 of life. Following the court's charge, the jury shall retire to consider  
19 the sentence to be imposed. Unless inconsistent with the provisions of  
20 this section, the provisions of sections 310.10, 310.20 and 310.30 shall  
21 govern the deliberations of the jury].  
22     (B) THE COURT MUST INSTRUCT THE JURY THAT THE JURY MUST BE UNANIMOUS  
23 WITH RESPECT TO THE SENTENCE TO BE IMPOSED. THE COURT MUST ALSO INSTRUCT

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 THE JURY THAT IN THE EVENT THE JURY FAILS TO REACH UNANIMOUS AGREEMENT  
2 WITH RESPECT TO THE SENTENCE, THE COURT WILL SENTENCE THE DEFENDANT TO A  
3 TERM OF LIFE IMPRISONMENT WITHOUT PAROLE.

4 (C) FOLLOWING THE COURT'S CHARGE, THE JURY SHALL RETIRE TO DETERMINE  
5 THE SENTENCE TO BE IMPOSED. UNLESS INCONSISTENT WITH THE PROVISIONS OF  
6 THIS SECTION, THE PROVISIONS OF SECTIONS 310.10, 310.20 AND 310.30 OF  
7 THIS CHAPTER SHALL GOVERN THE DELIBERATIONS OF THE JURY.

8 S 2. Paragraph (c) of subdivision 11 of section 400.27 of the criminal  
9 procedure law, as added by chapter 1 of the laws of 1995, is amended to  
10 read as follows:

11 (c) With respect to a count or concurrent counts of murder in the  
12 first degree, the court may direct the jury to cease deliberation with  
13 respect to the sentence or sentences to be imposed if the jury has  
14 deliberated for an extensive period of time without reaching unanimous  
15 agreement on the sentence or sentences to be imposed and the court is  
16 satisfied that any such agreement is unlikely within a reasonable time.  
17 The provisions of this paragraph shall apply with respect to consecutive  
18 counts of murder in the first degree. In the event the jury is unable to  
19 reach unanimous agreement, the court must sentence the defendant in  
20 accordance with [subdivisions one through three] SUBDIVISION FIVE of  
21 section 70.00 of the penal law with respect to any count or counts of  
22 murder in the first degree upon which the jury failed to reach unanimous  
23 agreement as to the sentence to be imposed.

24 S 3. Severability. If any clause, sentence, paragraph, subdivision,  
25 section or part of this act shall be adjudged by any court of competent  
26 jurisdiction to be invalid, such judgment shall not affect, impair, or  
27 invalidate the remainder thereof, but shall be confined in its operation  
28 to the clause, sentence, paragraph, subdivision, section or part thereof  
29 directly involved in the controversy in which such judgment shall have  
30 been rendered. It is hereby declared to be the intent of the legislature  
31 that this act would have been enacted even if such invalid provisions  
32 had not been included therewith.

33 S 4. This act shall take effect immediately, and shall apply to crimes  
34 committed prior to, on or after the effective date of this act.